



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/147413

PRELIMINARY RECITALS

Pursuant to a petition filed February 18, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on April 18, 2013, at Sheboygan, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's Request for Prior Authorization (PA) for speech and language therapy services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Theresa Walske

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Sheboygan County.

2. The Petitioner is 4 years old. She has a primary diagnosis of autism with a secondary diagnosis of pragmatic language disorder. She lives at home with her family.
3. The Petitioner did not qualify for school services based on standardized testing results in April, 2012. The Preschool Language Scale results indicate the Petitioner's receptive and expressive language skills are within the average range when compared with same age peers. The Hodson Assessment of Phonological Patterns was used to assess Petitioner's speech sound production skills. The results indicate her speech is generally intelligible. It was noted that she is somewhat more difficult to understand in conversation but this was due to soft vocal quality. She was found to be 60 – 70% intelligible when using a voice loud enough to be heard. The Petitioner's cognitive skills were found to be in the average range. She has equally developed verbal and nonverbal reasoning abilities. She showed some difficulty with multi-step directions but can follow single-step directions. The school's overall conclusion indicates that the Petitioner communicates at an age-appropriate level. She did not receive scores at or below 1.75 standard deviation on formal assessment of speech and language abilities. It found no impairment in speech or language.
4. In 2011, the Petitioner began to receive speech and language therapy from a private therapist. The therapist's evaluation is that the Petitioner's use of language is restricted for social functions, and her language development is erratic, with isolated missing or deviant skills. She demonstrates a lack of acquisition of specific grammatical morphemes. Her progress report dated November 6, 2012 indicates that she has met the goal to follow related two step directions with 90% accuracy. The goal is modified to 3 step directions. There is a goal for the Petitioner to match the therapist's rate and intonation when modeling words and phrases with 90% accuracy. Current performance is 25% accuracy. A third goal is for the Petitioner to participate in and imitate movements for modeled familiar nursery rhymes with 90% accuracy. It notes that she has progressed to 75% accuracy in this task. A fourth goal is to initiate social interaction by spontaneously producing/responding to an appropriate greeting or by producing appropriate conversation with 90% accuracy. Currently she produced an appropriate greeting 50% of contexts and produces appropriate topic with 25% accuracy. Another goal is to use the "he" and "she" pronouns appropriately with 90% accuracy. She has made recent progress with 2 – 3 elicitations.
5. On January 2, 2013, the Petitioner's provider, Progressive Beginnings, submitted a Request for PA for 12 sessions of speech and language therapy at a cost of \$1,920.
6. On January 28, 2013, the agency denied the Petitioner's PA.
7. On February 18, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Speech and language therapy is an MA-covered service, subject to prior authorization after the first 35 treatment days. Wis. Admin. Code, §DHS 107.18(2). In determining whether to approve such a therapy request, the DHCAA employs the generic prior authorization criteria found at §DHS 107.02(3)(e). Those criteria include the requirements that a service be medical necessary, appropriate, and an effective use of available services. Included in the definition of "medically necessary" at §DHS 101.03(96m) are the requirements that services not be duplicative of other services and that services be cost effective when compared to alternative services accessible to the recipient. It is up to the provider to justify the provision of the service. §DHS 107.02(3)(d)6.

When determining whether a service is necessary, the Division must review, among other things, the medical necessity, appropriateness, and cost of the service; the extent to which less expensive alternative services are available; and whether the service is an effective and appropriate use of available services.

Wis. Admin. Code, § DHS 107.02(3)(e)1.,2.,3.,6. and 7. “Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. HFS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

In this case, the OIG asserts that the requested services do not meet the definition of “medically necessary” because standardized testing done at the Petitioner’s school did not identify any speech or language deficits. It notes that the provider submitted no objective measurable testing or baselines to dispute the test findings. It argues that the goals established by the provider to help the Petitioner follow directions, learn pronouns and greet people appropriately are goals that are appropriate for all children of the Petitioner’s age.

The Petitioner’s mother testified on her behalf at the hearing. She indicated that the Petitioner has been regressing in her language skills since she no longer receives speech therapy. She noted that the Petitioner has difficulty following two step directions that are not routine and that she has issues with speech intelligibility. With regard to the school testing, the Petitioner’s mother indicated that the school looked at the Petitioner as a whole but there are specific areas where she needs help.

Based on the evidence presented, the agency is correct in determining that the PA request in this case does not meet the definition of “medical necessity” as defined by the pertinent regulations. A diagnosis of autism is not sufficient in itself to demonstrate that speech and language therapy is medically necessary. Standardized testing in April, 2012 found the Petitioner to be within normal ranges for auditory comprehension and expressive communication. Her cognitive abilities are within normal ranges. The PA request and the information presented at the hearing did not provide sufficient evidence to rebut the test findings that the Petitioner does not have a disability in speech and language. Based on the totality of the evidence, I conclude the requested services are not “medically necessary” as defined in the regulations.

CONCLUSIONS OF LAW

The agency properly determined the requested services are not “medically necessary.”

THEREFORE, it is

ORDERED

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

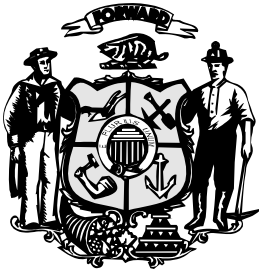
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 13th day of May, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 13, 2013.

Division of Health Care Access And Accountability